

the legal symmetry, in the real world the smaller, more trade dependent country is more exposed to harassment in practice.

Take a second example. National treatment could also be twisted vis-à-vis the presumed anti-competitive activities of oligopolies, an economic structure that more clearly typifies the Canadian market than its U.S. counterpart.³⁰ Under protectionist pressures (encouraged by the hoped-for tighter disciplines on the use of antidumping measures within the free trade area), the U.S. could modify its law, so that a sector in which a certain concentration level is reached in the other national market would trigger the presumption of market distortion leading to the imposition of import controls. The amendment to current law could provide for a numerical concentration level adjusted on a sectoral basis to allow U.S. industry to escape the same degree of scrutiny, while the market definition could focus entirely on the domestic economy, rather than the more logical cross-border market.

Finally, we should not assume, even where national treatment can help, that broadly populist, anti big business pressures might not, in the future, lead to a reversal of the current trend in the U.S. toward a more dynamic economic analysis of competition issues. Faced with a more disciplined trade remedy regime down the road and with no international obligations to prevent back-sliding, the U.S. Congress might reintroduce elements of a more stringent market concentration approach whereby big is more generally presumed to be bad. There is no guarantee that the U.S. will always act wisely, or even in its own longer term economic interest. There is no internationally binding system of rules to prevent the U.S. from shooting itself in the foot more frequently - and Canadian appendages as well, to the degree that we continue to depend on the U.S. market and our industrial structure remains more concentrated given the smaller size of the Canadian market.

³⁰ In this regard, some observers believe that oligopolies selling relatively undifferentiated products have often been unfairly treated by the courts. For example, see Donald Armstrong, "My Lady of the Law Is No Economist; My Lady Competition Law Is No Lady", in Frank Mathewson, Michael Trebilcock and Michael Walker, eds., *The Law and Economics of Competition Policy*, Vancouver: The Fraser Institute, 1990, pp. 389-417.